

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2103 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GAUTAMBHAI S SHAH

Versus

THASRA AGRI PRODUCE MARKET COM

Appearance:

None present for Petitioners

MR GR UDHWANI for Respondent No. 1

MR SAMIR DAVE for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/01/97

ORAL JUDGMENT

Perused the Special Civil Application and heard learned counsel for respondents.

2. Prayer is made by the petitioner in this Special Civil Application to quash and set aside the notices dated 10th January 1984 bearing Nos.60, 61 and 62 respectively, which have been filed on record as annexure

`A' collectively. Under these notices, the respondent No.1 called upon the petitioner to pay the market fees on agricultural produce. Only the notices were issued in the present case and as such, the petitioner instead of filing this petition straightway should have first given a reply to the same and whatever objections the petitioner had, should have been raised therein. Only after the authority has given a decision in the matter, there would have been some justification for the petitioners to avail of the appropriate remedy available under the Gujarat Agricultural Produce Market Act, 1963 and ultimately the matter is decided finally therein, the action of the petitioners, to approach this Court, would have been justified and not otherwise. It is not the case of the petitioner that such notices could not have been issued by the respondents. In the case of Executive Engineer B.S.H.B. v. Ramesh Kumar Singh, reported in 1996(1) SCC 327, the Hon'ble Supreme Court held that a writ petition against the show cause notice is not maintainable. It is not the case where any concluded action has been taken but it is a case where only action is proposed to be taken and as such, the petitioner should have first satisfied the authority that the action proposed to be taken, legally could not be taken against them.

3. In the result, this writ petition fails and the same is dismissed. The petitioners may file objections against the notices challenged in this Special Civil Application and on such objections filed, the respondent No.1 shall consider the same on merits and in case the contentions of the petitioners are not acceptable, then it shall pass a reasoned order. In that eventuality the petitioners have a right of alternative remedy available by filing revision application before the State Government. However, till final decision is taken by respondent No.1 in the matter, no action may be taken in furtherance of impugned notices thereof. The petitioners may file their objections against those notices within a period of one month from the date of receipt of certified copy of this order and the respondent No.1, on receiving the same, shall decide the representation within two months next thereafter. Rule discharged. No order as to costs.

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(sunil)